

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PRIVACY INTERNATIONAL, AMERICAN CIVIL  
LIBERTIES UNION, AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION; and  
CIVIL LIBERTIES AND TRANSPARENCY CLINIC,

Plaintiffs,

v.

18-CV-1488

FEDERAL BUREAU OF INVESTIGATION, et al.

Defendants.

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**JOINT STATUS REPORT**

Pursuant to the Text Order of United States Magistrate Judge Hugh B. Scott dated January 31, 2020, plaintiffs Privacy International, American Civil Liberties Union, American Civil Liberties Union Foundation and Civil Liberties & Transparency Clinic, and defendants Federal Bureau of Investigation (“FBI”), Drug Enforcement Administration (“DEA”), Department of Justice Criminal Division, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border Protection (“CBP”), Internal Revenue Service (“IRS”), U.S. Secret Service (“USSS”), Department of Justice Office of Inspector General (“DOJ-OIG”), Department of Homeland Security Office of the Inspector General (“DHS-OIG”), Department of Treasury Office of the Inspector General (“Treasury-OIG”) and Treasury Inspector General for Tax Administration (“TIGTA”) hereby file this joint status report.

In this action, plaintiffs seek to compel the production of records under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). This status report describes the current status of defendants’ searches and their review and production of records.<sup>1</sup>

1. TIGTA, DHS-OIG, Treasury-OIG and CBP: As explained in defendants’ Status Report dated September 10, 2019, four defendants – TIGTA, DHS-OIG, Treasury-OIG and CBP– have completed their searches and found no responsive records. *See* ECF No. 22 ¶¶ 15.g. & 16. Plaintiffs requested these agencies provide information of the nature of their searches. Pursuant to that request, TIGTA, DHS-OIG, and Treasury-OIG provided plaintiffs with descriptions of their searches on September 3, 2019, and CBP provided plaintiffs a description of its search on December 13, 2019. Based on those descriptions, plaintiffs have determined that they will not challenge the adequacy of the searches. *See* Joint Status Report dated Jan. 31, 2020, ECF No. 32 ¶ 1.

2. IRS, ICE, USSS, and DEA: As explained in prior Joint Status Report, four defendants – IRS, ICE, USSS, and DEA -- have completed their searches and productions in accordance with the interpretation and parameters set forth in defendants’ July 12, 2019 letter to plaintiffs. *See* ECF No. 32 ¶¶ 2-5. Plaintiffs are reviewing the records and the indices and/or explanation for the redactions. *Id.* If plaintiffs determine that they would like to challenge withholdings, redactions, or other aspects of these defendants’ responses, they will confer with defendants regarding a schedule for summary judgment briefing and submit any proposal to the Court in a subsequent status report. *Id.*

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<sup>1</sup> Defendants’ prior Status Report describes the background regarding plaintiffs’ FOIA requests and the efforts by the parties to clarify and narrow the scope of plaintiffs’ requests. *See* ECF No. 22.

3. Criminal Division: The Criminal Division has completed its search for potentially responsive records and currently is in the process of reviewing and processing those records. As explained in the prior Joint Status Report, the Criminal Division proposes to process 500 pages of potentially responsive pages per month and produce to plaintiffs any responsive, non-exempt records on a rolling basis. ECF No. 28 ¶ 6. Since the filing of the last Joint Status Report, the Criminal Division has made three additional monthly productions – one on February 19, 2020, one on March 17, 2020 and another on April 17, 2020.

4. DOJ-OIG: DOJ-OIG completed its search for all responsive, non-exempt material. On March 6, 2020, DOJ-OIG sent plaintiffs' counsel a letter producing 47 pages with portions of the records withheld pursuant to Exemptions 6, 7C, and/or 7E.<sup>2</sup> In the letter, DOJ-OIG also explained that it located (1) twenty-one documents consisting of approximately 150 pages that originated with the FBI and (2) one document consisting of approximately 22 pages that originated with the Office of the Attorney General. Pursuant to 28 C.F.R. § 16.4, DOJ-OIG referred these documents to the FBI and to the DOJ Office of Information Policy (for the Office of the Attorney General) for processing and direct response.

5. FBI: On March 6, 2020, the FBI made its first interim response to plaintiffs' request. It reviewed 503 pages and released 138 pages in full or in part. Portions were withheld pursuant to Exemptions 1, 3, 5, 6, 7C, 7D and 7E. As noted in the attached declaration, the Record/Information Dissemination Section (RIDS) of the FBI temporarily halted its FOIA program in response to the COVID-19 pandemic on March 17, 2020. Declaration of David Hardy, dated April 24, 2020, ¶ 13. Since that time, RIDS management continually monitored the situation.

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<sup>2</sup> DOJ-OIG also noted that it had sent portions of four of the 47 pages that contained information of substantial interest to the FBI for consultation. DOJ-OIG will inform plaintiffs of the results following this consultation.

*Id.* ¶ 17. As described in the declaration, RIDS plans to return at a very limited capacity beginning on April 29, 2020. *Id.* However, it will take time for RIDS to assess the work that has accumulated during the time they were restricted from being in the office and to re-adjust, negotiate and harmonize deadlines in its FOIA matters as a result of this disruption which may delay anticipated release dates for a period that exceeds the period during which RIDS was not operational. The FBI respectfully proposes to provide Plaintiffs' counsel with further updates with regard to the work in this case after RIDS has been able to make its assessments about the pending backlog of work. Plaintiffs hope and expect that the FBI will, at minimum, be able to quickly resume the 500 pages per month processing schedule that the parties previously agreed upon, particularly in light of the long pendency of this case. Plaintiffs propose to meet and confer with Defendants' counsel prior to the next status report regarding the FBI's production schedule.

6. As indicated in their last Joint Status Report, the parties propose that they file quarterly status reports hereafter, with the next quarterly report to be filed on July 31, 2020. As part of the next proposed status report, one or both parties may propose further orders regarding the management and scheduling of this case.

Dated: April 30, 2020

Respectfully submitted,

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